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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Peiguang Zhou

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EXAMINER

STEELE, JENNIFER A

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/750,295	Applicant(s) ZHOU ET AL.	
	Examiner Jennifer Steele	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, 16-21 and 23-35 is/are pending in the application.
- 4a) Of the above claim(s) 26-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13, 16-21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

NONFINAL OFFICE ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "A single sided elastic laminate capable of being rolled for storage and unwound from said roll... comprising: an elastic layer ...a facing layer... an adhesive ...deposited said elastic layer and said facing layer **and** a layer which comprises a meltblown nonblocking agent". Claim 1 also recites the limitation "whereby said layer which comprises a meltblown nonblocking agent is not in contact with said facing layer or said adhesive". If the single sided elastic laminate comprises four layers, elastic, facing, adhesive and meltblown, when the laminate is rolled for storage, the meltblown layer will come in contact with the facing layer. The original claims were written to claim an elastic layer a facing layer and an adhesive layer in between **or** a meltblown layer. In this case the meltblown layer would not come in contact with the facing layer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claim 1-5, 6-13, 16-21, 23 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Mleziva (US 6057024) as in view of Mormon (US 4,657,802) in further view of Schmidt (US 4460728) and Gage (US 5,459,186). Mleziva teaches a composite elastic material for use in end use products such as garments, pads, diapers and personal care products. Mleziva teaches a composite elastic material comprising a layer of continuous ribbon shaped filaments to which is bonded to a gatherable layer (ABST). The gatherable nonwoven layer may be of materials such as meltblown polymeric webs, spunbonded webs and/or thermoplastic films (col. 8, lines 22-34). Mleziva teaches the layers can be joined with an adhesive (col. 17, lines 19-57). Mleziva teaches adhesives such as a styrene-butadiene rubber-based adhesives applied at a layer amount 1-10 gsm (col 17, lines 19-35). Mleziva differs from the current application and does not teach the open time for the adhesive and Mleziva does not teach a polypropylene adhesive. Mleziva differs from the current application and does not teach a meltblown antiblocking layer. Mleziva differs from the current

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application and does not teach peel strength. Mleziva differs from the current application and does not teach layer weights.

Mormon teaches a composite nonwoven elastic web comprising a meltblown elastic layer of and a fibrous nonwoven gatherable web. Momon teaches an antiblocking layer to eliminate adhesion when the laminate is rolled for storage that can be fibrous meltblown nonwoven web or butcher paper applied to the elastic web layer (col. 9, lines 32-46). Mormon teaches a meltblown nonwoven web can be comprised of polyolefins (col. 10, lines 23-32 and col. 28, lines 1-5). Mormon teaches an elastic layer of 66 gsm and a gatherable facing layer of 21 gsm in example 2 (col. 26, lines 25-30). Mormon teaches varying the layer thickness of the layers to achieve desired weight (col. 27, lines 20-40).

Gage teaches a peelable thermoplastic film wherein a thermoplastic layer is applied to an elastic film for the purpose of low peel strength. Gage teaches the basis weight of the antiblocking layer is 10% of the laminate. The current application claims an antiblocking layer in the range of 10% of the composite. The examiner equates the 10% layer of Gage to the current application by adding the claimed elastic layer basis weight and the claimed facing layer basis weight and multiplying by 10%. The current application elastic layer basis weight is 4 to 20 gsm and a facing layer is 8 to 22 gsm, (equivalent 0.3 to 1.5 osy) resulting in a claimed composite weight from 12 to 44 gsm. 10% of this range is 1.2 to 4.4 gsm.

Gage teaches a peel strength between 336 to 440 gm/1/2 inch for examples 1-5 in Table 1 (col. 5). The current application claims the nonblocking layer reduces the peel

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strength to less than 200 g, 100 g and 50 g in claims 3-5. When the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention the examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP §§ 2112- 2112.02.

Schmidt teaches hot melt adhesive that are adaptable for diaper applications. Schmidt teaches hot melt adhesives prepared from polypropylene with an open time of 5 to 10 seconds (col. 1, lines 49-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the antiblocking layer of Mormon with the hot melt adhesive of Schmidt in the laminate construction of Mleziva motivated to produce an elastic laminate for disposable garments such as diapers. It would have been obvious to one of ordinary skill in the art to employ the amount of antiblocking agent layer of Gage to the composite elastic laminate of Mleziva motivated to produce a material that could be rolled for storage and unrolled for use. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the layer basis weights and to have controlled the amount of meltblown layer applied motivated to produce a composite material of desired weight that would not be too bulky and adversely affect storage on a roll.

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3. Claim 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Mleziva (US 6057024) as in view of Mormon (US 4,657,802), Schmidt (US 4460728) and Gage (US 5,459,186) as applied to claims 1-5, 7-13, 16-18 and 24 above and in further view of Shawver (US 6909028). Mleziva teaches a composite elastic material comprising a layer of continuous ribbon shaped filaments to which is bonded to a gatherable layer (ABST). The gatherable nonwoven layer may be of materials such as meltblown polymeric webs, spunbonded webs and/or thermoplastic films (col. 8, lines 22-34). Mleziva differs from the current application and does not teach a facing layer that is necked.

Shawver teaches an elastic laminate for use as a barrier layer in diapers and personal care products. Shawver teaches a filled film adhered to an outer fibrous layer. The outer fibrous layer is a neckable elastic fabric having a basis weight between 10 –70 g/m² (col. 10, lines 17-45).

It would have been obvious to one of ordinary skill in the art to employ a necked gatherable facing layer of Shawver to the composite elastic laminate of Mormon motivated to produce an elastic material of the desirable stretchability personal care products and diapers.

Double Patenting

4. Claim 1-5, 7-13, 16-21 and 23-24 of this application conflict with claim 1, 9 and 12 of Application No. 11/011439. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such

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claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

5. Claim 1-5, 7-13, 16-21 and 23-24 of this application conflict with claim 1-20 of Application No. 11/070307. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Response to Arguments

6. Applicant's arguments, see A and B, filed 10/10/2006, with respect to the rejection(s) of claim(s) 1-5, 7-13, 16-21 and 23-25 1-5, 7-13, 16-21 and 23-25 under Stopper with respect to the meltblown nonblocking layer have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Mormon, Gage, Schmidt and Shawver.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Steele whose telephone number is (571) 272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


ELIZABETH M. COLE
PRIMARY EXAMINER

2/8/2007